

Central Illinois Public Service Company :
-vs- :
Coles-Moultrie Electric Cooperative : **03-0723**
:
Complaint under the Electric Supplier Act. :

The North One Half (N ½) of the Southwest Quarter (SW ¼) and the Northwest Quarter (NW ¼) of the Southeast Quarter (SE ¼) except those portions previously conveyed for public highway purposes all in Section

Sixteen (16), Township Twelve (12) North, Range Eight (8) East of the Third Principal Meridian, more particularly described as follows:

Commencing at the Northeast corner of the Southeast Quarter (SE $\frac{1}{4}$) of said Section Sixteen (16); thence South 0 degrees 17'32" West (bearings based on F.A.I. Route 04 (I-57) R.O.W. plat) a distance of 1,331.09 feet along the East line of said Section Sixteen (16); thence South 88 degrees 16'20" West a distance of 1,329.10 feet to a point in the West right of way line of Lerna Road and the point of beginning; thence continue South 88 degrees 16'20" West a distance of 3,580.55 feet to a point in the East right of way line of F.A.I. Route 04 (I-57); thence North 04 degrees 25'49" East along said right of way line a distance of 234.86 feet; thence North 17 degrees 12'02" East along said right of way line a distance of 317.84 feet; thence North 47 degrees 55'25" East along said right of way line a distance of 404.60 feet; thence North 23 degrees 17'43" East along said right of way line a distance of 352.33 feet; thence North 73 degrees 03'10" East along the South right of way line of F.A. Rt. 17 (IL. RT. 16) a distance of 286.40 feet; thence North 86 degrees 24'38" East along said right of way line a distance of 500.62 feet; thence North 85 degrees 50'22" East along said right of way line a distance of 250.45 feet; thence North 89 degrees 16'21" East along said right of way line a distance of 1,923.01 feet; thence South 32 degrees 09'38" East along said right of way line a distance of 152.36 feet; thence South 00 degrees 29'12" East along the West right of way line of Lerna Road a distance of 317.39 feet; thence South 02 degrees 22'33" West along said right of way line a distance of 200.25 feet; thence South 00 degrees 29'12" East along said right of way line a distance of 300.00 feet; thence South 05 degrees 13'26" West along said right of way line a distance of 100.50 feet; thence South 05 degrees 03'38" East along said right of way line a distance of 136.00 feet to the point of beginning, containing 91.531 acres more or less.

And also:

The Southwest Quarter (SW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) and a part of the Southeast Quarter (SE $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) and a part of the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) all in Section Sixteen (16), Township Twelve (12) North, Range Eight (8) East of the Third Principal Meridian, more particularly described as follows:

Commencing at the Northeast Corner of the Southeast Quarter (SE $\frac{1}{4}$) of said Section Sixteen (16); thence South 0 degrees 17'32" West (bearings based on F.A.I. Route 04 (I-57) R.O.W. plat) a distance of 1,331.09 feet along the East line of said Section Sixteen (16); thence South 88 degrees 16'20" West a distance of 1,329.10 feet to a point in the West right of way line of Lerna Road and the point of beginning; thence South 05 degrees 03'38" East along said West right of way line of Lerna Road a distance of 114.80 feet; thence South 00 degrees 29'12" East along said West right of way line of Lerna Road 1,218.21 feet to a point on the South line of said Section Sixteen (16); thence South 88 degrees 09'57" West along said South line of Section Sixteen (16) a distance of 1,875.50 feet; thence North 00 degrees 11'59" West a distance of 1,336.49 feet; thence North 88 degrees 16'20" East a distance of 1,859.57 feet to the point of beginning, containing 58.503 acres more or less.

For a total sum of approximately 148.862 acres, all situated in Lafayette Township, Coles County, Illinois, and, more fully described on the plat attached hereto as Exhibit A, otherwise known as "Coles Centre Business Park." In that Counter-Complaint, CMEC claimed that it had the right to serve the premises pursuant to Section 5 of the Act (Count I); pursuant to Section 8 of the Act (Count II); pursuant to Section 14(i) of the Act (Count III); and pursuant to Section 14 (iii) of the Act (Count IV).

On March 3, 2004, CIPS Filed a Motion for Judgment on Count I of its Complaint, arguing that CMEC's Notice was null and void and of no force and effect because the potential customer had not made a firm commitment for the actual delivery of electric service. CIPS reasoned that the Notice it received did not constitute notice of a proposed construction of an extension or service within the meaning of Section 7 of the Act, 220 ILCS 30/7. CIPS concluded that the Notice it received did not trigger the 20-day period provided in Section 7 because, at the time notice was given, CMEC did not have an agreement with the customer to provide electric service.

In CIPS' Motion, it concluded that the ESA did not confer jurisdiction on the Commission to determine hypothetical electric service entitlements; consequently, CMEC's purported Notice did not trigger the 20-day response deadline set forth in Section 7 of the ESA. CIPS further sought dismissal of all remaining Counts of the Complaint, contending that this docket, in its entirety, should terminate upon resolution of its Motion for Judgment on the Pleadings on Count I.

On April 5, 2004, CMEC filed a Reply to CIPS' Motion. It argued therein that a motion for judgment on the pleadings fails when the pleadings demonstrate the existence of a genuine issue of material fact. Here, CMEC reasoned, such a dispute existed because CIPS pled that a customer had not made a request for electric service,

and CMEC denied that assertion and that “. . . Agracel, Inc., as the customer, has requested that the electric service be constructed in the second quarter of 2004.” CMEC further claimed that nothing in the facts set forth in the pleadings indicated that the customer’s request that the electric service construction start in the second quarter of 2004 or that the Notice it issued was premature. After hearing arguments of counsel, the Administrative Law Judge found there was insufficient evidence to determine whether CMEC’s Section 7 Notice was premature.

On January 11, 2005, CIPS filed a Motion to Reconsider the ruling on CIPS’ Motion for Judgment on the Pleadings, noting that, there was no contract between CMEC and Agracel for the Coles Center Business Park; however, an offer and acceptance of the obligation to provide electric service is a condition precedent to a Section 7 Notice. In CMEC’s Response, CMEC noted that a contract requiring CMEC to provide electricity to Coles Centre was executed on March 9, 2005.

On June 1, 2005, the Administrative Law Judge (the ALJ”) served a Proposed Order on the parties, finding that the contract for electric service between CMEC and Agracel, Inc. was executed in March of 2005. Thus, there was no agreement for electric service between those parties when the Notice issued—in November of 2003. The ALJ also found that Section 7 of the Act required an actual agreement to provide electricity, not just an intention to do so. The ALJ reasoned that the purpose of a Section 7 Notice is to advise a competing electric supplier of a firm commitment to provide service, and without a firm commitment, there would be no actual controversy for this Commission to adjudicate.

The ALJ further concluded that granting CIPS’ Motion for Judgment on Count I of its Complaint still left a live case or controversy regarding Counts II-IV of the Complaint, as well as the entire Counter-Complaint. Thus, the Commission would have jurisdiction over the Counter-Complaint, even if the allegations in the entire Complaint were to be resolved, or dismissed. (See, e.g., *Health Cost Controls v. Sevilla*, 307 Ill. App. 3d 582, 588-89, 718 N.E.2d 558 (1st Dist. 1999), noting that a Section 7 Notice is not the only mechanism that confers jurisdiction on the Commission under the ESA). Section 7 also provides that, if no notice is received, an electric supplier claiming that it should be permitted to serve a customer can file a complaint with this Commission, no later than 18 months after the completion of construction, extension or the commencement of service, seeking a determination as to which supplier should be permitted to furnish the proposed service. (220 ILCS 30/7 and 30/8). Accordingly, the ALJ concluded that judgment on the pleadings on Count I of the Complaint did not resolve the remaining issues alleged in the Complaint and in the Counter-Complaint. CMEC filed a Brief on Exceptions. No Replies to Exceptions were filed.

A status hearing convened on August 17, 2005. Both parties appeared through counsel and stated that they had reached an agreed disposition of this matter, which, if adopted by the Commission, would lead to the entry of a Commission Order affirming the proposed ruling of the ALJ on CMEC’s Section 7 Notice, (the ruling on the Motion for Judgment on the Pleadings) but awarding the customer and the platted premises to

CMEC. In support of their proposed settlement, the parties noted that the purpose of the Electric Supplier Act is to "avoid the duplication of facilities and to minimize disputes between the parties." (220 ILCS 30/2). Both CIPS and CMEC asserted that awarding the customer to CMEC in this instance will further the purposes of the statute and would be in the public interest.

On September 28, 2005, CMEC and CIPS filed a Joint Stipulation and Motion for Entry of Draft Order, reciting the fact that the Parties had reached an agreed disposition of this matter in accordance with the representations made at the August 17, 2005 hearing. Both the Stipulation and the Motion requested that the ALJ mark the record "Heard and Taken" and that the Commission enter an order substantially similar to the Draft Order attached to the Stipulation and Motion. In the Stipulation, the parties waived their right to service of an Administrative Law Judge's Proposed Order in the event this Stipulation was accepted and the Motion for Entry of a Draft Order were to be granted.

II. Analysis and Conclusions

The Commission notes that the record establishes that Agracel, Inc. has entered into an electric supplier contract with CMEC for all of the electric service requirements with respect to the premises known as "Coles Centre Business Park" further supporting the decision that CMEC should be authorized to provide electric service to Agracel, Inc. and/or subsequent customers situated within the premises described herein, all as more fully shown by the attached plat, marked Exhibit A and by reference incorporated herein. The Commission has been provided with no reason to deny the Motion for Entry of Draft Order and finds that entering the Order affirming the ALJ's Proposed Ruling and awarding the customer in question to CMEC will be in the public interest, as it clarifies for parties practicing at the Commission, a procedural matter—that resolution of one portion or element of a dispute (in this case, count I of CIPS' Complaint) leaves the remaining portion of that dispute to be resolved or adjudicated.

The Commission, having considered the record herein, is of the opinion and finds that:

- (1) Coles-Moultrie Electric Cooperative Inc., is an Illinois not-for-profit corporation and is an "electric supplier" within the meaning of the Electric Supplier Act;
- (2) Central Illinois Public Service Company d/b/a AmerenCIPS, is an Illinois corporation and is an "electric supplier" within the meaning of the Electric Supplier Act;
- (3) the Commission has jurisdiction over the parties and of the subject-matter in this proceeding;
- (4) the facts recited and conclusions reached in the prefatory portion of this Order hereinabove are hereby adopted as findings of fact;

- (5) the parties' proposed resolution of this matter is reasonable and in the public interest; therefore, it should be approved.

IT IS THEREFORE ORDERED that the Proposed Order of the Administrative Law Judge granting the Motion for Judgement of Central Illinois Public Service Company d/b/a AmerenCIPS on Count I of its Complaint is hereby affirmed and adopted by the Commission.

IT IS FURTHER ORDERED that Coles-Moultrie Electric Cooperative is hereby authorized to provide exclusive electric service to the premises described on the plat attached hereto.

IT FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Admin. Code 200.880, this Order is final, and it is not subject to the Administrative Review Law.

By Order of the Commission this 19th day of October, 2005.

(SIGNED) MARTIN R. COHEN

Chairman